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July 27, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., N.W.
Washington, D.C. 20554

**Re: AT&T Corp. Petition for Declaratory Ruling Regarding
Enhanced Prepaid Calling Card Services,
WC Docket No. 03-133**

Dear Ms. Dortch:

Adam Kupetsky of WilTel Communications, LLC ("WilTel") and I made an *ex parte* presentation today regarding the proceeding referred to above to Daniel Gonzalez, Senior Legal Advisor to Commissioner Martin. We used the attached handouts, which summarize the content of the presentations. If you have any questions, please contact me.

Respectfully submitted,



David L. Sieradzki
Counsel for WilTel Communications, LLC

cc: Daniel Gonzalez

**THE COMMISSION MUST ACT NOW IN THE
AT&T “ENHANCED” PREPAID CALLING CARD PROCEEDING**

A. A RULING HERE IS LONG OVERDUE.

- It is discriminatory and market-distorting for one company to be able to charge lower prices simply because it evades payment of charges for universal service and access. The same rules must clearly apply to all. Market winners should be companies with the best products and lowest real economic costs, not those with the highest tolerance for regulatory and enforcement risk.
- Today FCC inaction is confusing consumers and harming competition. Access charge/USF avoidance based on purported bundling of an “enhancement” or “information service” with a basic telecommunications offering is growing fast -- and is not limited to so-called “enhanced” prepaid calling cards.
- WilTel agrees strongly with AT&T that any ruling issued in this proceeding must apply equally to all parties in the industry, including facilities-based carriers and resellers.

B. THE FCC MUST CHOOSE BETWEEN TWO OPTIONS:

Option 1: All parties must pay their fair share of universal service and access.

- The Commission recently held that parties may bundle enhanced services or CPE with telecommunications – but that when they do so, they must pay universal service contributions based on the revenues from the separate telecommunications component of the bundle, or based on the total revenues from the bundled service. *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 16 FCC Rcd 7418 (2001) (“*Bundling Order*”).
- The Commission could confirm that the *Bundling Order* remains in effect, and that the same policy continues to apply to interstate access charges pursuant to Section 69.5 of the rules.
- Importantly, however, this Option only works if the Commission also makes very clear that it will not allow parties to game the rules to avoid their fair share of universal service and access costs in other similar contexts.
 - Otherwise, gaming of the system will not stop. Companies (including perhaps AT&T again) can easily come up with all manner of so-called “enhancements” whose only function is to avoid USF and access costs.
 - Consumers still will be confused. Markets still will be distorted. Regulators still will face disputes over non-compliance, and arguments over so-called “retroactivity.”

Option 2: ***No parties need to pay access and universal service (and refunds are available to those that have done so)***

- WilTel would support a very clear ruling that when companies bundle telecom and any “enhancement” they call an information service, they are excused from paying universal service and access -- provided that this ruling is generally applicable to everyone and not just AT&T.
- AT&T is not doing anything special that others cannot do. It is charging lower prices simply because it is not paying a cost of doing business that others are bearing because they believe the current FCC rules so require.
- We can get our own customers to write letters supporting lower prices based on our being excused from paying universal service and access. However, we do not think it is fair to confuse our customers by not explaining to them what this issue is really about. The Commission knows full well the game AT&T is playing.

C. IF THE COMMISSION DELAYS ACTION HERE, OTHER COMPETITORS ALSO WILL BE FORCED TO STOP PAYING UNIVERSAL SERVICE AND ACCESS FEES.

- AT&T alone cannot be allowed to avoid paying a major cost of doing business. This situation is economically unsustainable.
- AT&T’s “enhanced” prepaid card is but the tip of a large iceberg. This and related schemes aimed at universal service and access avoidance already are becoming a key driver of the market for all interexchange services: card, toll free and 1 plus services.
- The Commission needs to clarify what is permissible and what is not. Telecom competition today is unfairly based on companies’ respective tolerance for regulatory risk, rather than their fundamental cost and service quality advantages.
- Going forward, the Commission also must take strong steps to enforce its universal service and access rules so that all competitors pay their fair share. It is not acceptable to let companies take unilateral action to withhold payments, and then argue that they were “confused” as to the law.



FCC MUST ACT QUICKLY ON AT&T PREPAID CALLING CARD PETITION

WilTel Communications, LLC

Ex Parte Presentation

WC Docket No. 03-133

FCC Must Act Quickly on AT&T Prepaid Calling Card Petition

- FCC must act quickly on AT&T Prepaid Card Petition, which has been pending for over a year
- FCC silence being treated as consent to avoid access charges and USF
- Failure to resolve issue will result in:
 - Similarly-situated companies competing based on amount of regulatory risk they are willing to take rather than on business capabilities
 - Jeopardizing USF

The Issue

- Can a company carrying phone-to-phone traffic that originates and terminates on the PSTN avoid access charges and USF due to purported service enhancements that are bundled with the core telecom service that the end-user is paying for?
 - For example, AT&T claims its prepaid card service is enhanced because advertisers pay for recorded messages played for end-users.
 - Other entities claim that “enhancements” such as delivering time-of-day or call duration data exempt traffic from access charges and USF, even if end-users never request or use them.
- FCC’s decision must apply whether traffic is handled by one or more companies

Confusion Over What Services Are “Enhanced” Is Affecting the Marketplace Now

- Companies are already treating the FCC’s silence as confirmation that access and USF do not apply
 - Amount of traffic from prepaid calling card calls is significant
 - The issue is not limited to prepaid card traffic – carriers in other, related sectors are making similar claims
 - Customer-requested pricing in the wholesale marketplace – with demanded rates often at or below the applicable access charges – clearly indicates an expectation that access charges can be avoided

Customer-Requested Pricing Sample

LATA	Requested Price	Minimum Access Charge
130 (RI)	.0025	.003
222 (NJ)	.0033	.003
557 (TX)	.0037	.003
252 (VA)	.0017	.003
480 (AL)	.0026	.003

FCC has Responsibility to Act

- It is FCC's job to produce regulatory certainty
 - Clear rules
 - Enforcement of rules
- Failure to set clear rules rewards companies that flout the rules and penalizes companies that seek to comply

Strong Public Policy Reasons Mandate that the FCC Address Issue Quickly

- If FCC doesn't act:
 - Industry is forced to compete on relative appetite for regulatory risk rather than the quality and efficiency of networks and services
 - Regulatory risk tolerance determines winners and losers – not technology, efficiency, or other real marketplace factors
 - USF funding jeopardized as carriers stop contributing and seek refunds for purportedly “enhanced” calls
 - Sprint Pleading
 - Others forced to follow so they don't subsidize others' USF obligations
 - USF fund will suffer; litigation will ensue